CARMEN POWELL, IN PRO PER
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619 420-4204

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Carmen Powell, Plaintiff/Petitioner/Movant vs Defendants/Respondent/s City of Chula Vista; Chula Vista Police Dept, Det Ruth Hinzman; Agt Anderson; Agt Oyos, Sgt Cervantes; and person and entities unknown, City of San Diego and San Diego County Protective Services Workers, Julie Smith, Rebecca Slade, Nadia Najors, Megan Petsinger, Lucia Garcia, Deborah Davies, LCSW, Dr. H. Grewal, Dr. M. Mirkarimi, Diana Chase, Carolyn Levenberg, and entities and persons unknown Does 1 to 100	Case No. '07 CV 1836 JAH (JMA) **PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** **Memorandum of Points and Authorities** **SEPTEMBER 29, 2008** **2:30 P.M.** **HONORABLE JOHN A. HOUSTON** DEPT: 11

PLAINTIFF'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT TO ADD ADDITIONAL PARTIES and to reinstate claim for Diana Chase et al and Dr. M. Mirkarimi

Plaintiff respectfully request this Honorable Court to grant leave for Plaintiff to file a Second Amended Complaint: Plaintiff filed her initial complaint in this Court on September 19, 2007, and seeks leave of Court to file a second amended complaint. The amendment proposed by the Plaintiff would not inject new legal issues into the case and would set forth with greater specificity a set of factual allegation to accompany the existing causes of action. This is the only means currently available to the Plaintiff to better allow this court to understand the possible factual disputes between the parties. This basic information regarding which procedural vehicle will best allow for a full and fair yet efficient determination of the constitutional issues.

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

1. LEAVE TO AMEND THE PLEADINGS SHOULD BE GRANTED LIBERALLY WHERE, AS HERE, THERE IS NO PREJUDICE TO THE OPPOSING PARTY.

According to Federal Rule of Civil Procedure 15, "a party may amend the party's pleadings once as a matter of course at any time before a responsive pleading is served...otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party." Fed. R. Civ. P. 15 (a). Where leave of the court is sought, Rule 15 states that "leave shall be freely given when justice so requires." Id. In Foman v. Davis, the Supreme Court held that

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> In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – leave sought should, as the rules require, be "freely given."

Sections 473 and 576 of the Code of Civil Procedure provide that a court may, in the furtherance of justice, allow a party to amend any pleading on any terms as may be proper. (Code Civ. Pro. S 473 (a), 576.) "This statutory provision giving the courts the power to permit amendments in furtherance of justice has received a very liberal interpretation by the court of this stat." (Klopstock v. Superior Ct. (1941) 17 Cal. 2d 13, 19; see al Nestle v. City of Santa Monica (1972) 6 Cal. 3d 920, 939.)

Here, leave should be granted because amendment will serve an important purpose without any risk of prejudicing the state. The Plaintiff recently filed and 827 Motion in Superior Court which was granted and gave the Plaintiff additional information on a factual basis for Plaintiff's proposed amended complaint which helps Plaintiff clarify for both the parties and the Court with a more precise structure and relationships with respect to the basis of the jurisdiction by this Court. In the Second Amended Complaint, Plaintiff has attempted, to the best of her understanding, to provide additional factual details concerning the Defendants, their relationships and methods of operation.

These changes in the Complaint do not alter the underlying claims Plaintiff set forth in the prior Complaints, nor does the complaint include facts that are not already known to the Defendants. Given the aforementioned circumstances, it cannot be said that Plaintiffs' request reflects any "dilatory motive" on Plaintiffs' part, nor would allowing Plaintiffs' Motion For Leave To File A Second Amended Complaint impose any undue prejudice upon Defendants. Foman, 371 U.S. at 182. Also, there has been no undue delay by Plaintiffs' in amending the complaint, nor failures to cure any allege deficiencies.

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Granting this request would be consistent with the "underlying policy that disputes should be determined on their merits, and not on the technicalities of pleading rules." Advanced Cardiovascular Sys., 989 F. Supp. At 1241. Given the fact that Plaintiffs' request to file a Second Amended Complaint would neither prejudice the Defendants, nor delay or change any existing pleadings, the amendment would meet the need to identify the extent of factual disputes between the parties. By this Court granting Plaintiff's leave to file its amended complaint is likely to speed rather than delay resolution of the issues by identifying the scope of potential disputes of fact between the parties in advance. For these reasons, the Court should grant the Plaintiffs' Motion For Leave To File A Second Amended Complaint.

Dated: August 22, 2008 (handwritten correction: "er")

By: [signature]

NOTICE OF MOTION AND MOTION
"Oral Argument Not Required,"

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: Please take notice that on September 29, 2008 at 2:30pm, before Judge John A. Houston in Department 11 of the U.S. District Court Southern Division, Plaintiff Carmen Powell will move, and hereby does move, for leave to file a second amended complaint in this Civil case No. 07CV 1836 JAH (JMA). This motion will be made on the basis of the attached memorandum of points and authorities. Based on additional information that has been obtained, Plaintiff states that leave to amend her complaint should be liberally granted so that, the Defendants and the Court will be able to determine the general extent of the possible disputes of fact on the constitutional issues now before the Court.

Date: August 22nd, 2008

Carmen Powell, in Pro Se

Case No. '07 CV 1836 JAH (JMA)